

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The employer is United Cable Direct, Inc., who is a satellite television installation company. Claimant worked for United Cable Direct, Inc., from February 3 to June 3, 2002, as an installer. Claimant performed the physical work required to install the satellite television systems in homes and businesses.

In April 2002, claimant began noticing some back symptoms. Claimant did not believe those back symptoms were anything to worry about until June 3, 2002, when he began experiencing severe pain and numbness in his right leg. Claimant described his symptoms as follows:

Well, on the 3rd, that's when I had the severe problems. I was at the Shook residence and I noticed that when I started working that job, actually when I got there there was no problems. . . .

And I went back out and grabbed the ladder. When I grabbed the ladder and moved, there was a tree up there and I ducked underneath it, and that's when I noticed something wasn't right, but I worked anyways. And the more I worked and did the job the more the pain and leg numbness was setting in. I couldn't stand on my leg but I still did the job.²

Claimant testified he was not certain whether it was lifting and carrying the ladder or climbing that caused his symptom flare-up as the symptoms flared as he was walking from the truck towards the house. Claimant testified, in part:

Well, I didn't know if it was the ladder or the climbing or what. It happened when -- between the truck to the house, when I set the ladder up.

Now, the best I can remember it would have had to have been when I pulled the ladder out. Because if you could see the drive where I parked, there was a tree right there and I had to duck up underneath it to go to the house.³

Claimant sought chiropractic treatment and was told that he probably had a herniated disc. The chiropractor referred claimant to a specialist, Dr. Michael P. Estivo, who has recommended back surgery. In the meantime, claimant saw a doctor at the West Wichita Minor Emergency Office, who agreed with the chiropractor's opinion that claimant probably had a herniated disc. Finally, claimant has also seen Dr. Robert Eyster for a second opinion, who also recommended surgery.

² P.H. Trans. at 11 (Aug. 1, 2002).

³ P.H. Trans. at 26 (Aug. 1, 2002).

Claimant testified that he had previously injured his back while working in Colorado approximately 13 years ago. According to claimant, he was diagnosed as having a back strain for which he received some therapy. Before June 3, 2002, claimant had last received back treatment, which was a chiropractic adjustment, in September 2001, when he was working for another employer building buses.

When claimant sought treatment from the chiropractor on June 4, 2002, claimant told the doctor that his back problems started at work approximately three weeks before, with the pain becoming severe on June 3, 2002. On June 6, 2002, when claimant sought treatment at the West Wichita Minor Emergency Office, he provided a history that his back had been hurting since Monday, which was the 3rd. According to Dr. Estivo's June 24, 2002 office notes, the history that claimant provided was that "[h]e relates that this has been present over the past two months more severe with increasing numbness in his right leg since June 3, 2002 with no specific injuries." And finally, the history given to Dr. Eyster on July 3, 2002, when he first saw claimant was that claimant had been having symptoms for approximately one month.

When considering the entire record, including the testimony provided at the continuation of the preliminary hearing held on August 7, 2002, the Board agrees with the Judge that it is more probably true than not that claimant injured his back while working for respondent and that he is entitled to receive workers compensation benefits for that injury. The Board finds claimant's testimony credible that he experienced back symptoms after beginning to work for respondent and that on June 3, 2002, he experienced a significant flare-up in symptoms after removing a ladder from his truck and while carrying it into position to use to climb onto a roof. The Board concludes claimant's accident and back injury arose out of and in the course of employment with respondent. Accordingly, the preliminary hearing Order should be affirmed.

WHEREFORE, the Board affirms the August 16, 2002 preliminary hearing Order entered by Judge Frobish.

IT IS SO ORDERED.

Dated this ____ day of October 2002.

BOARD MEMBER

c: Gary K. Jones, Attorney for Claimant
Kendall R. Cunningham, Attorney for Respondent and its Insurance Fund
Jon L. Frobish, Administrative Law Judge
Director, Division of Workers Compensation